



THE RIGHTS AND ENTITLEMENTS OF NURSES  
INJURED BY ASSAULT AT WORK



## Explanatory Booklet

Unfortunately assaults on Nurses are common in the Irish Health Services and particularly so in the psychiatric services. In 1993 three Nurses suffered very serious injuries in an assault in Artane in Dublin. This was a watershed event which accelerated a campaign for justice and fair play for Nurses injured by assault which resulted in the introduction of a “Nurses Indemnity Scheme” (1994) and a “Special Scheme for nurses absent from work as a result of a serious physical assault” (1997) This was later reviewed to produce the “Revised Serious Physical Assault Scheme” (2002). In 2008 after 15 years campaigning a no fault Compensation Scheme for Nurses was introduced but only after Nurses were forced to engage in Industrial Action.

### The Compensation Scheme is in 2 parts.

1. Insurance based Scheme for Nurses Employed in the Mental Health Services.
2. Insurance based Mechanism to Address Significant Trauma.

Finally, for Nurses who experience extreme or complicated injuries and who deem the payments listed in the compensation scheme schedule as insufficient they retain the right to pursue a claim for compensation through the “Injuries Board i.e.” formally the “Personal Injuries Assessment Board (P.I.A.B) and subsequently, if not satisfied, through the Courts.

Basically to benefit under the schemes a nurse must be able to establish that they were assaulted and that an injury occurred. Therefore there is an onus of responsibility on the injured nurse, and indeed colleagues of nurses injured by assault, to report and record such an assault, to seek medical attention, and to make applications or claims for compensation in a prescribed manner and within specified time frames. Having regard to this the Psychiatric Nurses Association (PNA) has decided to prepare this booklet to ensure that every Nurse is personally informed of not just his/her entitlement but the obligations and responsibilities which accompany those entitlements to enable the nurse to access them.

As always if you are having any difficulties accessing your rights and entitlements contact your local PNA Branch Officers. But remember your local Branch Officer can do little to help if you have overlooked or ignored your responsibilities to record the incident, to seek medical attention and make claims within the time limits.

It is also essential that all members have a full understanding of the totality of entitlements and obligations of the Assaulted Nurse, so as to enable them to assist the injured nurse particularly those who may not be able to adhere to protocol in the immediate aftermath of such a traumatic event.

**Each Nurse has personal responsibility for his/her own Welfare**

Des Kavanagh

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This Explanatory Booklet is designed for information purposes only and is not a legal interpretation of all your rights nor of the entities or documents referred to herein. Reference should always be made to the particular organisation, entity, agreement/circular/document. For assistance contact your local PNA Branch officer in the first instance.

## You have been assaulted at work

*You have been the victim of a serious physical assault.*

*What should happen now?*

### A. Proper Reporting

- If you are in a position to do so complete an incident form and make sure details of the incident are recorded in the patient's case notes, in report books and that incident report forms are filled in etc, etc, .
- If the Nurse is unable to attend to this then colleagues/Nurse Managers should ensure proper records are made. Indeed even if the Nurse records the incident there is an onus on the Clinical Nurse Manager/nurse in charge to ensure that all details are appropriately recorded and that any assistance that the nurse may require is provided including medical aid.
- N.B The Union is aware of a number of cases, including the emergence of crush injuries, where symptoms can take up to 7/8 days to emerge, where details of the incident were not recorded or where the records were minimalistic and where the employer later contested that an assault took place and suggesting that the injury could have been sustained outside work.

Accurate reporting and detailed record keeping is essential

### B. Seek Medical Attention

- In any case of physical injury it is important that the injured nurse gets medical attention ASAP. You should ask whoever is treating you, the G.P or A&E clinician to provide you with a medical report of your attendance, your diagnosis and treatment and to file a record of same. (A & E clinician contracts of employment are usually short and when you go back seeking this medical record the clinician may have moved on and sometimes records can be incomplete and even lost).
- If you suffer neck or back injuries or any injury which appears to arise from nerve damage, disc damage or muscular damage etc it is important that you seek the best medical advice. You may have great confidence in some "Alternative Healer" or other non-medically qualified person but the essential question is: Will that person be accepted by the insurance company underwriting the Compensation Scheme or alternatively, if your case ends up in the courts, as a credible competent and qualified witness?
- If you are psychologically traumatised and suffering from a recognised psychiatric condition this must be medically verified if you wish to seek payment under the Insurance Based Mechanism to address significant trauma.

Medical Treatment and Verification Injury/  
Including P.T.S.D. is essential

## Rights and Entitlements

If you are injured by assault there are a number of rights and entitlements which can be categorised under 3 broad headings.

- (A) **Revised Serious Physical Assault Scheme. (2002)**
- (B) **New Compensation Schemes**
- (C) **Social Welfare Entitlement / Benefit**

If you remain dissatisfied that the foregoing represents a reasonable response because of the nature of your injuries and/or because of the level of Negligence involved you can refer a claim to

### Injuries Board.ie or subsequently The Law Courts

#### **Revised Serious Physical Assault Scheme (2002)**

Guidelines issued by the Health Service Employment Agency (HSEA January 2002) on the operation of the scheme for employees who are absent from work as a result of serious physical assault incurred in the course of their duty.

#### **Eligibility**

- All nurses both permanent and temporary who are absent as a result of a serious physical assault, in the workplace, in the course of their duty:
- This scheme will be applied to a nurse who is injured:
  - a) In the actual discharge of his/her duty.
  - b) Without his/her default.
  - c) By some injury attributable solely to the nature of his/her duty.

#### **Rules**

- (i) The Serious Physical Assault Scheme will be initiated on foot of a report of the assault. The report should be completed by the ward manager and forwarded to the Occupational Health Department. A copy of the report should also be forwarded to the Director of Nursing and Personnel department.
- (ii) Medical care will be provided as soon as possible thereafter, Counselling assistance will be provided if appropriate

## 1. Sick Pay

A nurse may be paid salary during an absence resulting from a serious physical assault in the course of his/her duty as follows:

- (a) Full pay based on the earnings you would have earned if still working your normal roster.
- (b) Such full pay would include basic pay, allowances and premium earnings and may be paid for a period of up to six (6) months.
- (c) Payments made under (b) above shall be reduced by the amount of any benefit under the Social Welfare Code the nurse is entitled to arising from absence due to the injury. The employee will be assisted regarding social welfare entitlements.
- (d) Salary paid to a nurse in the circumstances outlined above will not affect a nurse's entitlement under the Sick Pay Scheme.

## 2. Medical Assessments

During the six month period the recipient must undertake to comply with regular medical assessment including independent medical assessment as may be deemed appropriate by the Occupational Health Department. The recipient will be expected to co-operate fully with rehabilitation measures that may be recommended.

## 3. First Special Extension of Sick Pay

If it transpires before the end of the six months special payments period as outlined in Paragraph 2, that based on a medical review, no later than six (6) weeks into the period of absence that a return to work is unlikely within this six month period or immediately thereafter, but there remains a reasonable expectation that the nurse will return to work, a First Special Extension may be granted. The Director of Nursing in conjunction with the Occupational Health Department may seek a special extension for payment as outlined in paragraph 1 above. This extension will not exceed a period of three (3) months.

## 4. Second Special Extension of Sick Pay

Notwithstanding point 3 above, if it transpires after medical evidence no later than six (6) weeks into the first special extension that a return to work is unlikely during this three month period or immediately thereafter, but there still remains a reasonable expectation that the nurse will return to work, a further final extension may be granted. The special extension will provide for payment of **basic pay only**. The Second extension will not exceed a period of three months.

## 5. Application of Article 109 for a Limited Period \*

As the two special extensions will only be granted in instances where a return to work is highly probable, it is therefore anticipated that limited application of Article 109 (SI No. 455 of 1998, (Superannuation) (Consolidation) Scheme, 1998) will only be implemented in exceptional circumstances and for a limited period as the Board and Occupational Health Department may consider reasonable. Any decision to apply Article 109 for a limited period will be dependent on the employee agreeing to undergo regular medical assessment as may be deemed appropriate. The decision to invoke Article 109 will be granted and paid in accordance with paragraph 6 of the scheme.

## **6. Application of Article 49/109 for an Unlimited Period \***

Where the staff member has not recovered or is certified permanently incapacitated based on medical reviews the Occupational Health Department in conjunction with the Director of Nursing, will refer the matter to the Personnel Department where arrangements will be made to invoke Article 109 of the Local Government Scheme i.e. Injury Grant Scheme:5/6 of basic salary.

- (i) The Injury Grant Scheme will not exceed 5/6ths of remuneration (inclusive of the money value of emoluments) of the position in which he/she received the injury. The 5/6ths allowance will be reduced to take account of -
  - (a) Any other allowance payable by the health board (e.g. where the nurse subsequently ceases to hold office on permanent ill-health grounds).
  - (b) Any lump sum or gratuity so payable (including a retirement lump sum)
  - (c) Any benefit payable under the Social Welfare Code (including workmen's compensation, injury benefit, disablement benefit, widow's pension).

*\* For details of how the injury grant is calculated and applied for both a limited period and an unlimited period see Appendix A.*

- 7. If within seven (7) years after the date of the injury s/he dies as a direct result of the injury the health board may grant to his/her widow/widower or father/mother if wholly dependent on him/her at the time of death and to or in respect of his/her children, or any of them, such allowance in money for life or for a limited period as the health board may consider reasonable.

## **8. Hospital Expenses**

Expenses incurred in respect of hospital/medical charges will be recouped as follows:

- (a) A refund of expenditure incurred in respect of treatment provided by the Irish Public Health Service.
- (b) General Practitioner Casualty and Consultant visits.
- (c) Prescription charges

Nurses will be obliged to claim under medical insurance schemes where appropriate (e.g. V.H.I Refund of Drug Schemes, etc) and any payments made by the Health Boards in respect of hospital expenses will be solely in respect of excess expenditure by the nurse. Payments made under this scheme do not confer any admission of liability on the part of a Health Board.

In exceptional circumstances an employee may be refunded in respect of expenditure incurred for private treatment.

## **9. Employee Welfare**

Employers will keep in regular contact with employees who are beneficiaries of the Scheme and will continue to offer assistance and advise on this Scheme or any Employee Welfare matter.

## 10. Appeals Mechanism

An employee may reserve the right to appeal a decision in relation to eligibility under the Serious Physical Assault Scheme.

### Protocol for Application of the Physical Assault Payment Scheme

1. Payments under the Physical Assault Scheme will be initiated on foot of a report of the assault. The report should be completed and forwarded to the line manager and a copy to the Occupational Health Department within 48 hours of the assault taking place.
2. The Occupational Health Department will arrange for a medical assessment for the employee after a four month period of absence. If there is medical evidence to suggest that a return to work is unlikely within a six month period from the date of the assault a representation may be made to the General Manager for an extension to the special payment arrangement. This extension may not exceed a three month period.
3. If at the end of the special extension it transpires, based on a further medical review, that a return to work is unlikely by the Occupational Health Department, in conjunction with the line manager will refer the matter to the Human Resource Department where arrangement will be made to invoke Article 49/109 of the Local Government Scheme.
4. Notwithstanding point 3 above, if it transpires after medical evidence that a return to work is likely, such medical evidence having been formed at the end of the three month special extension, a further extension may be approved by a General Manager, in association with the line manager. This extension will not exceed a three month period and will only be recommended where a return to work is recommended following a medical review and consequently there will be no requirement to invoke Article 49/109 of the Local Government Scheme mentioned in 3 above.
5. An employee in receipt of payments under the Physical Assault scheme will have no entitlement to payments under the Sick Pay Scheme.
6. In accordance with point 3 above an employee in receipt of payment provisions in Article 49/109 of the Local Government Scheme may, following medical advice be required to undertake alternative employment as a means of rehabilitation. An employee in receipt of payments under article 49/109 will be required to undertake regular medical assessment in accordance with the scheme.

#### ***The HSEA have offered the following advice to employers:***

*“The Physical Assault Scheme and the protocol for implementation should be operated in a considered and sensible manner. It is important that the welfare of an employee out of work as a result of a physical assault is protected and that every effort should be made to facilitate the employee in making a full recovery.*

*An employee should be made aware of the full provisions of the Physical Assault Scheme. The Scheme provides for an appeals mechanism where the application of the scheme is in dispute, however appeals in this manner should be the exception rather than the rule.”*



## Compensation Schemes

The PNA were successful after 15 years of campaigning in persuading the government following Industrial Action in May 2008 to introduce a compensation scheme for nurses. It must however be acknowledged and recognised that the Labour Court handed down a landmark decision in March 2007 which recommended the introduction of a Compensation Scheme.

- The first element of the scheme is an **“Insurance Based Scheme”** which will provide for compensation for physical injury and provide personal injury cover for nurses employed in the Mental Health Services who are assaulted in the course of their duties. The schedule of benefits covers 48 categories of injury ranging from €5,000 to €100,000. HSE/HR Circular 04 (A) 2008.
- The second element of the scheme is an **“Insurance Based Mechanism”** to address significant trauma that will provide for a fixed quantum of compensation in respect of Post Traumatic Stress Disorder (PTSD) arising from trauma in line with that outlined in the scheme. This scheme can only be utilised following an assault by a patient where no physical injury occurs arising from the assault or where a Physical Injury occurs which has not and will not lead to a claim under the Insurance Based Scheme and which results in a recognised Psychiatric condition (WHO ICD listings) which can be medically verified. In summary this scheme provides for an award of €15,000 in particular instances which are outlined in HSE/HR Circular 29/2008.

Please note again the importance of recording the incident within 48 hours of its occurrence in order to meet with the conditions of both schemes

### Insurance Based Scheme

The insurance Based Scheme set out in HSE/HR Circular 04 (A) 2008 provides for a set of payments associated with the agreed range of physical injuries; those payments to incorporate compensation in respect of psychological trauma normally expected in cases of assault leading to physical injury. The event insured against is assault arising as a direct consequence of the insured person's employment, which shall, independently of any other cause, be the sole cause of any of the injuries. Cover will operate on a 24 hour basis, in the relevant hospital, home centre, patients' home, travelling as part of the nurse's employment to and from patients/clients.

If you sustain any one of the 46 types of injuries and 2 additional benefits covered by the Insurance based Scheme for Nurses employed in the Mental Health Services you will be entitled to a lump sum payment in accordance with the schedule detailed below. The claims procedure as outlined must be adhered to.

<b>Benefits</b> <b>The schedule of Benefits payable under the scheme are as follows:</b>		
	<b>Benefit</b>	<b>Amount</b>
1	Death	€25,000
2	Loss of two or more limbs or both eyes or one of each	€100,000
3	Loss of sight in one eye	€30,000
4	Permanent and total loss of speech	€100,000
5	Permanent and total loss of hearing in both ears	€100,000
6	Permanent and total loss of hearing in one ear	€30,000
7	Permanent and total loss of use of one limb	€75,000
8	Permanent and total loss of use of one big toe	€12,500
9	Permanent and total loss of use of any other toe	€10,000
10	Permanent and total loss of use of one thumb	€20,000
11	Permanent and total loss of one forefinger	€12,500
12	Permanent and total loss of use of any other finger	€10,000
13	Permanent and total loss of use of one hand	€30,000
14	Permanent and total loss of use of shoulder or elbow or wrist	€20,000
15	Permanent and total loss of use of hip or knee or ankle	€20,000
16	Total loss of use of back or spine (excluding cervical) without cord involvement	€20,000
17	Total loss of use of neck or cervical spine without cord involvement	€30,000
18	Removal by surgical operation of a kidney	€20,000
19	Quadriplegia	€100,000
20	Paraplegia	€100,000
21	Fracture to leg or arm	€12,500
22	Fracture to Hand	€10,000
23	Fracture to Skull	€12,500
24	Fracture to cheek or nose or jaw	€10,000
25	Fracture to vertebra	€12,500
26	Fracture to rib or sternum	€7,500
27	Fracture/dislocation to hip or pelvis	€12,500
28	Bodily injury resulting in treatment requiring sutures	€5,000
29	Dislocation of shoulder or arm or elbow or wrist	€10,000
30	Dislocation of thumb or finger	€5,000
31	Dislocation of knee or ankle	€12,500
32	Dislocation of foot	€7,500
33	Dislocation of big toe or toe	€5,000
34	Burns or scalds to any area apart from the face requiring hospitalisation	€6,000
35	Bite injuries resulting in medical treatment	€7,500
36	Contusion or haematoma or laceration of spleen	€10,000
37	Contusion or haematoma or laceration to heart	€10,000
38	Contusion or haematoma or laceration to bowel or digestive system	€10,000
39	Contusion or haematoma or laceration to bladder	€7,500
40	Contusion or haematoma or laceration to kidney	€12,500
41	Contusion or haematoma or laceration to lung	€10,000
42	Crushing injury to foot	€5,000
43	Crushing injury to hand	€5,000
44	Crushing injury as defined by (WHO ICD)	€10,000
45	Hernia	€5,000
46	Permanent total disablement from gainful employment of any and every kind	€100,000

**In respect of Benefits 1 to 46 the following conditions shall apply:**

**(A)**

Any bodily injury sustained must comply with the definitions and classifications of those injuries as defined in the World Health Organisation International Classification of Diseases (WHO ICD) Version 10.

Each injury specified on cover will be defined as a recognised condition (as per WHO ICD) which can be verified by a medical practitioner.

**(B)**

Benefits shall not be payable in respect of any one insured person under more than one of additional benefits 1 to 46 in connection with the same accident.

**Additional Benefit 1**

Dental expenses ( vouched)	up to	€7,500
Payment for psychological trauma arising from the physical assault.		€1,500

**Additional Benefit 2**

Burns or Scalds to face requiring hospitalisation		€9,000
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Cover under the above terms is based on fixed benefits, with the exception of dental treatment which will be covered on vouched expenses. The benefits will require medical confirmation of the relevant condition. Cover has been arranged by the HSE through Irish Public Mutual Insurance Ltd.

**Reporting of Incidents**

All incidents are required to be reported through the appropriate channels within 48 hours of their occurrence.

**Claims Procedure**

The claims procedure for the scheme is consistent with that already in place for other types of insurance claims under the HSE insurance policies.

The various stages of procedure in such eventuality are:

1.	Claim notified by employee to HSE
2.	HSE notify the Irish Public Bodies Mutual Insurances Ltd (IPB)
3.	IPB issue claim form to HSE
	Claim form completed by injured employee
5.	Medical Certificate section of claim form completed by employee's doctor
6.	Completed claim form returned to HSE
7.	HSE forward claim form to IPB
8.	IPB validate claim and issue cheque

**Arbitration Mechanism** - A joint arbitration Mechanism will be put in place to deal with situations where disallowances of a claim is not accepted.

## Insurance Based Mechanism to Address Significant Trauma

The Insurance Based Mechanism set out in HSE/HR Circular 29/2008 will apply in cases of significant Trauma to a Psychiatric Nurse carrying out assigned duties (other than when off duty as outlined at the third bullet point below). The mechanism is only to be used following an Assault by a Patient where no physical injury occurs, or where a physical injury occurs which has not led and will not lead to a claim under the Insurance Based Scheme, and which results in recognised Psychiatric condition which can be medically verified. (As per ICD - 10 Classification of Mental and Behavioural Disorders)

The Insurance Based Mechanism provides for an award in the following instances of €15,000.

### The particular instances are where a Psychiatric Nurse is;

- Threatened with;
  - o Death,
  - o Serious Injury
  - o A viable weapon (including a syringe used as a weapon)
  - o Sexual Assault
  
- Held Hostage, Attempted or Completed Kidnap, False Imprisonment or Prevented Egress From a Closed Space of More than 2 Hours Duration.
  
- Persistent & Intrusive Stalking Over a Prolonged Period, Verifiable Threatening Behaviour While off Duty by a Patient or Former Patient.
  
- Strangulation
  
- PTSD - as defined in ICD - 10 (outlined in Circular 29/2008 extract attached here as Appendix B)

A claim under the Insurance Based Mechanism will only be considered once the full terms of the mechanism have been satisfied. The Insurance Based Mechanism is only to be used following an assault by a patient where no physical injury occurs, or where a physical injury occurs which has not and will not lead to a claim under the Insurance Based Scheme, and which results in a recognised psychiatric condition (WHO ICD listings) which can be medically verified.

The Mechanism will deal with exceptional cases which are not covered by the Insurance Based Scheme as outlined in HSE HR Circular 04(A)/2008.

#### ***A 'Patient' describes;***

***"A Person in the Community who is or has been a patient of Psychiatric Services"***

***A Person presenting for or receiving periodic or ongoing treatment at any Clinic or Hospital of Day Care of the Mental Health Services (Task Force Definition)***

## Reporting of Incidents

All incidents are required to be reported through the appropriate channels within 48 hours of their occurrence.

### Claims Procedure

The claims procedure for the scheme is consistent with that already in place for other types of insurance claims under HSE policies.

A claim should be lodged by or on behalf of the claimant within six calendar months. The various stages of procedure in such eventuality are:

1.	Claim notified by employer to HSE
2.	HSE notify Irish Public Bodies Mutual Insurance Ltd (IPB)
3.	IPB issue claim form to HSE
4.	Claim form completed by injured employee
5.	Medical certification section of claim form completed by employee's doctor
6.	Completed claim form returned to HSE
7.	HSE forward claim form to IPB
8.	IPB validate claim and issue cheque

### Arbitration Mechanism

A joint arbitration Mechanism will be put in place to deal with situations where disallowance of a claim is not accepted.

### Protocol for the application of the Insurance Based Mechanism to address Significant Trauma

The Insurance Based Mechanism will apply in cases in Significant Trauma to a Psychiatric Nurse while carrying out assigned duties (other than while off duty as outlined earlier). This mechanism is only to be used following an assault by a patient where no physical injury occurs, or where a physical injury occurs, which has not led and will not lead to a claim under the Insurance based Scheme, and which results in a recognised Psychiatric Condition (as per ICD 10 Listings) which can be medically verified.

### Conditions of Insurance Based Mechanism

The Insurance Based Scheme for physical injuries should be used in all but exceptional instances. Injuries addressed under the Insurance Based Scheme cannot be considered under the Insurance Based Mechanism.

### This mechanism will deal with exceptional cases which are not covered by the Insurance Based Scheme.

The Insurance Based Mechanism only relates to cases of assault of a Psychiatric Nurse by a patient as previously defined.

Insurance Based Mechanism relates to an assault with no physical injury leading to a claim under the Insurance Based Scheme.

The mechanism applies only to the person assaulted and does not extend beyond this person. An application can be made on behalf of an incapacitated applicant by their representative. Any self injury subsequent to the assault is not covered in this scheme.

An injury sustained in the context of restraint must be shown to have occurred while restraining a patient using an approved technique led approach in compliance with the Code of Practice of Physical Restraint in Approved Centres issued by the Mental Health Commission.

Claims must be logged by or on behalf of the Claimant, within six calendar months of the Assault. Applicants will be obliged to release all medical records (including full medical records predating the assault). Failure to do so will disqualify the claim.

Incomplete or falsification of information relating to the claim including submitted medical records will invalidate the claim and may result in recovery of any payments awarded.

Any deliberate attempt to withhold Medical history or assessment will cause the claim to be discontinued.

All medical reports must be submitted in a timely manner.

All relevant medical or clinical tests results (lab, image, physiotherapy, psychological assessments etc) must be submitted in a timely manner.

The claimant must undergo independent psychiatric & medical assessments (which may include relevant specialist medical practitioners).

Where medical treatment has been prescribed (e.g. physiotherapy, forms of psychotherapy, medications etc) the applicant is expected to fully cooperate with all treatments in order to restore their health.

Staff will be expected to assist and act as witnesses in the hearing of any related case that may be taken against a known Assailant(s).

HSE aims to press charges where staff are assaulted – if possible given the Legal Capacity of the assailant(s) at the time of assault

The independent medical assessment will have access to the complete medical records including the previous medical records.

All parties will be obliged to make available all relevant documentation within their power of procurement and possession relating to the assault and any other relevant detail or records requested.

The circumstances of the assault and the context in which the assault occurred will be subject to an incident review.

Witnesses to the assault will be required where available. If there are no witnesses some form of independent verification will be required. (wording subject to approval by insurers).

All Psychiatric Nurses are expected to participate in any Management of Aggression & Violence Training provided / offered by employer consistent with HSE policy which will be informed by the Joint Working Group on Managing Violence and Aggression in the Workplace.

Refusal or failure to participate in such training may debar a Psychiatric Nurse from inclusion in the mechanism.

Mechanism relates to Psychiatric Nurses while carrying out duties and while directly employed by HSE Only. (Other than when off duty as earlier outlined at the third bullet point of Appendix A). Claims must relate to recognised conditions as classified in the ICD-10 Classification of Mental and Behavioural Disorders.

The applicant must co-operate with all prescribed treatments. If they do not co-operate awards may be held over for a defined period pending the outcome of current treatment programmes. No compensation will be payable where the claimant and the perpetrator of the assault were living together as members of the same household at the time the injuries were inflicted.

No compensation will be payable to an applicant who has not given all reasonable assistance, in relation to any information or reports that it may require.

No compensation will normally be payable where the claimant has, by acting outside the scope of practice, contributed to the event giving rise to his/her injuries. (wording subject to approval by insurers).

All aspects of this process will be carried out with the utmost sensitivity to the individual and their circumstances and will be wholly confidential to the process.

Any award is without prejudice and does not suggest or confer guilt upon a third party who is alleged to have perpetrated the assault.

These guideline will operate in conjunction with the procedures and/or conditions as laid down by the Insurance operators.

The operation of the Insurance Based Mechanism will be reviewed 12 months from the date of commencement.

\* For full details of HSE/HR Circular O4(A) 2008 and HSE/HR Circular 29/2009 visit [www.pna.ie](http://www.pna.ie)

**The PNA are currently pursuing application of the Compensation Scheme beyond the Psychiatric Service in accordance with undertakings from HSE that this scheme would be extended outside of the Psychiatric Service within one year of application to nurses in the Psychiatric Services.**

## CLAIM PROCEDURE

# Claims Procedure - Insurance Based Scheme for Nurses Employed in Mental Health Services

Both the Insurance based scheme and Insurance Based Mechanism for nurses as outlined in HSE Circular 04(A) 2008 and 29/2008 respectively provide personal injury cover to nurses employed in Mental Health Services who are assaulted during the course of their duties outlines a claims procedure. This claims procedure has now been made more streamlined within one central area with one named individual responsible for processing all claims.

### The New Claims Procedure is as follows:

1. Claims should be notified to Willis Risk Services Limited by contacting Ms. Amanda Egan on 01 6396304, amanda.egan@willis.ie or post to Willis Group, Grand Mill Quay, Barrow Street, Dublin 4 marked for the attention of Ms. Amanda Egan.
2. Claims should be notified to Willis as soon as possible after the claimant is aware that an incident has happened which may give rise to a claim.
3. An R.S.A. claim form (the company underwriting the schemes, will be forwarded to the claimant by Willis.
4. A completed claim form should be submitted to Ms. Amanda Egan in Willis along with any incident report form, health and safety report, and details/copies of medical evidence of injury, medical examinations or reports.
5. A claim cannot be processed by insurers by insurers unless the above documentation is received.
6. Once the above is received, Willis will notify R.S.A., the insurers.
7. Willis will notify Ms. Valeria Plant, Assistant National Director Finance, HSE, Civic Centre, Main Street, Bray, Co. Wicklow of the new notification.
8. Willis will confirm receipt of the notification to the claimant.
9. Once R.S.A. are notified, R.S.A. will arrange for any necessary medical examination to be arranged.
10. R.S.A. will contact Willis with details of the medical examination.
11. Willis will contact the claimant with details of the medical
12. It is imperative that the claimant attends the medicals arranged by the insurers as insurers will be unable to investigate the claims further.
13. If a claimant confirms attendance at a medical and for some reason cannot attend and does inform Willis, a non attendance fee will be charged by R.S.A. insurance to the claimant directly. This can be upwards of €100. Cancellations notified in good time will not incur this non attendance fee.
14. If/When a claim is settled, Willis will receive the cheque from R.S.A.
15. Willis will send the cheque to Ms. Valerie Plant, HSE for onward transmission to the claimant.

### Following clarification being sought by the PNA regarding the length of time for processing claims having regard to the unique nature of this scheme the HSE responded:

*"You are correct in saying that the processing of claims under the scheme is quite different from the procedure generally for personal injury claims for HSE staff, as although it is insurance based, the scheme for nurses in the psychiatric service is a no fault scheme.*

*The HSE insurance administrators are aware of the unique nature of the scheme for nurses in the psychiatric service, as are the claim handlers in IPB. I do not anticipate any undue delays in the processing of claims arising from this scheme".*



## Social Welfare Entitlements/Benefits

An insured person in Ireland who is injured at work or on an unbroken journey to/from work or who contracts a prescribed occupational disease is entitled to benefits under the occupational injuries scheme and furthermore it is a requirement of the revised scheme for nurses injured by assault that they must claim their social welfare entitlement. All nurses whether in **PRSI classification A or D** are entitled to claim occupational injury benefit.

Almost all nurses appointed after April 1995 are **class A PRSI** contributors and will be more familiar with claiming from the Dept of Social and Family Affairs since they must do so to access benefits e.g. disability benefit if sick, maternity benefit etc.

**Class D PRSI** contributors which is most nurses (but not all) appointed prior to April 1995, may not be familiar with claiming from Dept of Social and Family Affairs, often, believing that they have no entitlement to any social welfare benefit. If you are injured in the workplace and as a **class D PRSI** contributor you do have entitlement to occupational Injuries benefits under the social welfare code. It is highly recommended that if you are injured at work, whether by assault or otherwise, that you claim your entitlement. This safeguards your rights even if you are fit to work again in less than 3 days (see below).

It is a requirement of the revised scheme for Nurses Injured by Assault (2002), and, if invoking Article 109 for an un- limited period i.e. retiring on the grounds of ill health due to injury that the Nurse must claim any social welfare entitlement. Employers will not process an application under article 109 until such time as the nurse provides information and evidence of their social welfare application claim and payment. Class D PRSI contributors are again usually not aware of this requirement and it can cause significant delays as to process a claim through social welfare is time consuming as they will more than likely insist on carrying out their own medical assessment.

### Benefits

If you are injured by assault and cannot work due to illness you may be entitled to benefit from a social welfare payment.

#### 1. Class A PRSI

Class A PRSI contributors (all nurses appointed in the Public Service after April 1995 are Class A PRSI Contributors) (most non public service nurses were always class A PRSI contributors) depending on PRSI rules may be entitled to one or some combination of the following:

#### Illness Benefit

Illness Benefit is a payment for people who cannot work due to illness and who satisfy the Pay Related Social Insurance (PRSI) contribution conditions.

#### Occupational Injury Benefit

An Occupational injury or disease is a disease or injury you contract in the course of your work.

#### Injury Benefit

Injury Benefit is a weekly payment for people unable to work due to accident at work or a disease they have contracted due to the type of work they do. Accidents that occur on an unbroken journey to or from work and that lead to injury are regarded as occupational injuries.

### Medical Care

If you are injured at work or contract an occupational disease, you can get a refund of the cost of certain expenses that are not already paid by the Health Service Executive or covered under the Treatment Benefit Scheme,

### Disablement Benefit

You may get disablement benefit if, as a result of an accident at work or a prescribed disease contracted at work, you suffer a loss of physical or mental ability.

### Invalidity Pension

Invalidity pension is payment for people who are permanently incapable of work because of illness or incapacity and who satisfy the Pay Related Social Insurance (PRSI) contribution conditions.

### Disability Allowance

Disability Allowance is a weekly allowance for people with a disability aged between 16 and 66. Your disability must be expected to last for at least one year. You must pass a medical exam, a means test and be habitually resident in Ireland to get the allowance.

## 2. Class D PRSI

Class D PRSI contributors (most nurses (but not all) appointed in the Public Service before April 1995 are Class D PRSI contributors) may be entitled to one or some combination of the following:

- Injury Benefit
- Medical Care
- Disablement Benefit

Hereunder are further details on the 3 benefits that are most likely to be paid to the vast majority of staff injured at work.

### Injury Benefit

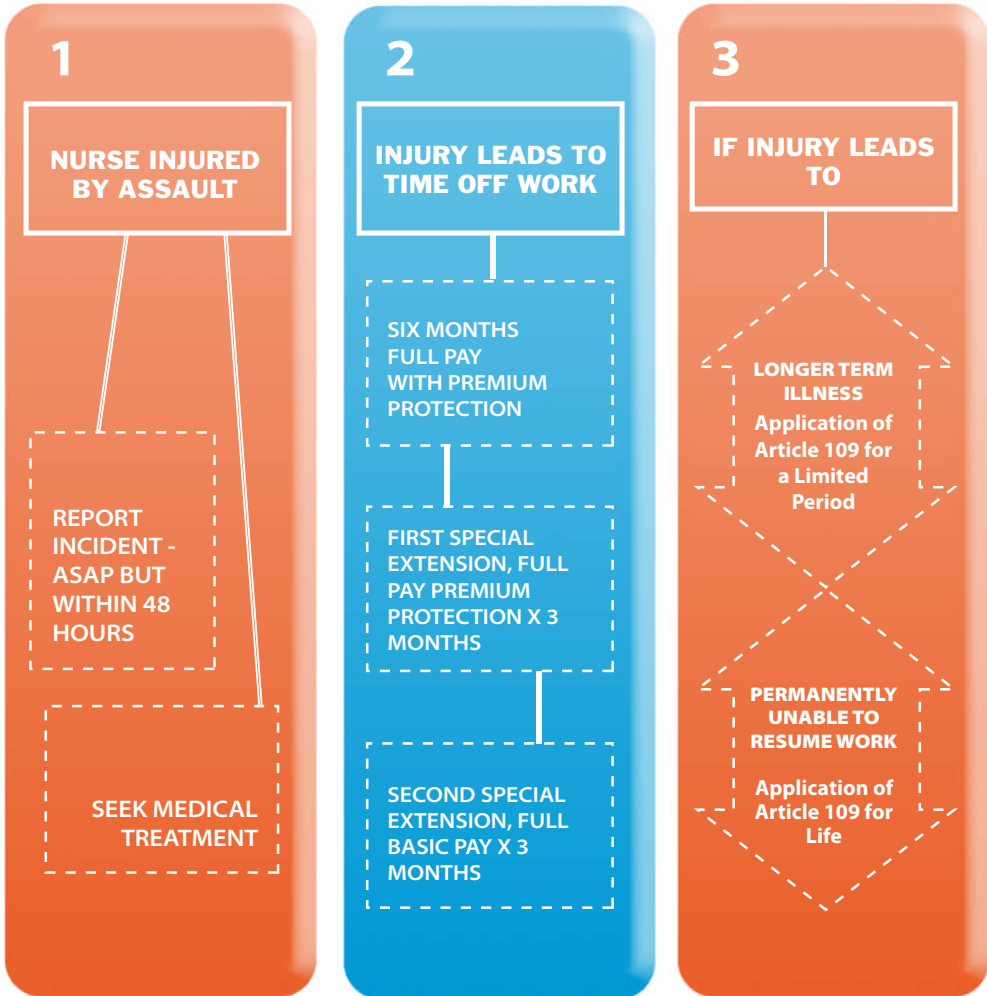
Injury Benefit is one of the benefits available under the Occupational Injuries Benefit Scheme. Injury benefit is designed to deal with short term claims up to 26 weeks. It is a weekly payment made to you if you are unfit to work due to:

- An accident at work
- An accident while travelling (on an unbroken journey) directly to or from work
- An occupational disease

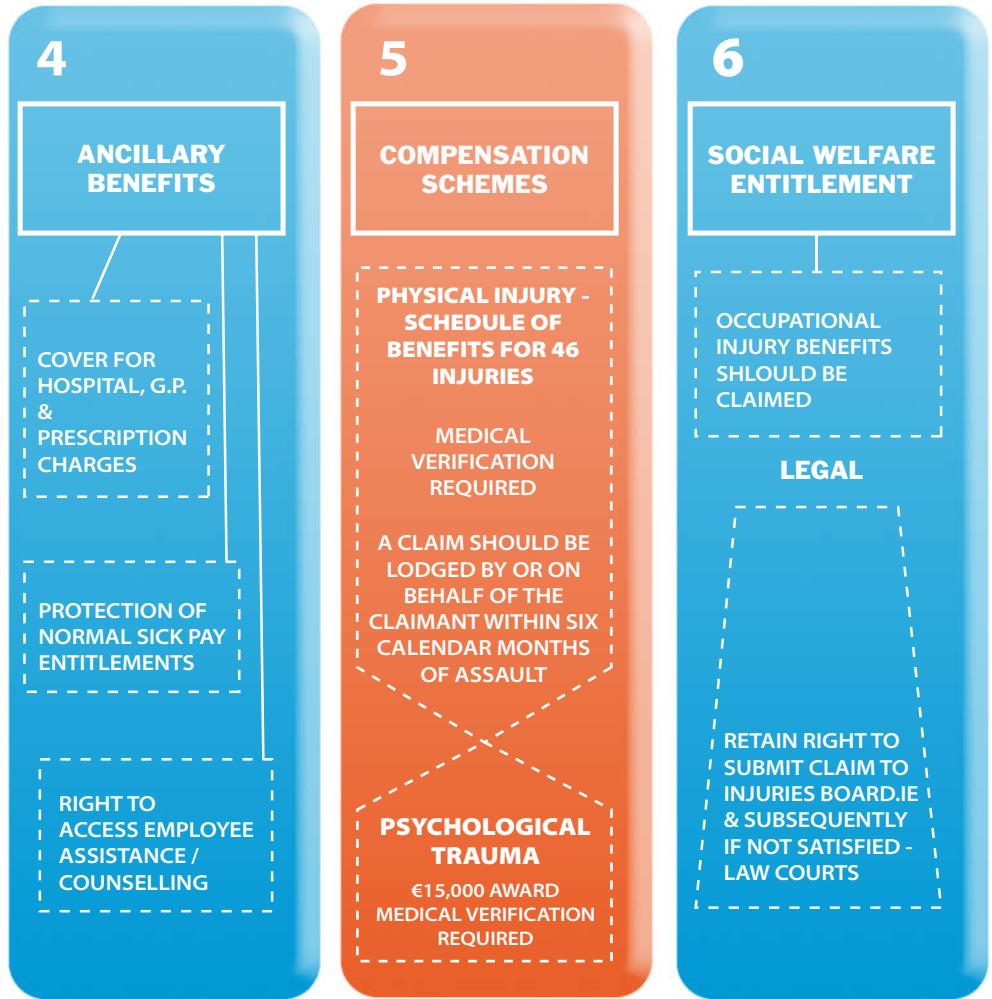
To get Injury Benefit you must be unfit to work for more than 3 days as a result of the accident or disease (excluding Sundays or paid holiday leave).

**N.B. However, even if you return to work within 3 days you are entitled to a declaration that an occupational accident occurred. This safeguards your future rights to benefits under the Occupational Injuries Benefit Scheme as not all work accidents and diseases result immediately in illness or disablement.**

# INJURED BY ASSAULT -



# PROCESS AT A GLANCE



## **Disablement Benefit**

Disablement Benefit is a benefit under the Occupation Injuries Scheme. This payment is made to longer term claimants beyond 26 weeks. It can be paid to you if you suffer a loss of physical or mental faculty because of an accident at work, an accident travelling directly to or from work, or a prescribed disease contracted at work. Payment is made where the level of disablement following the accident or disease is assessed at 1% or more.

Where the level of disablement is assessed at 20% or more the benefit is paid by weekly or monthly pension. However if the rate is assessed at less than 20%, the benefit is paid as a lump sum. The size of the lump sum will vary depending on the degree of disablement and how long you are reasonably expected to be disabled.

If you are getting disablement benefit and you are unfit to work, you may qualify for illness benefit based on your social insurance contributions (PRSI). If you do not qualify for illness benefit or another social welfare payment, you may get incapacity supplement.

## **Medical Care**

An important entitlement for any nurse injured at work (not only by assault) is that you can get a refund of the cost of certain medical expenses under “medical care” which is another benefit capable of being claimed under the occupational injuries scheme.

The Medical Care Scheme allows you to get a refund of the cost of medical care and attention that are not paid or capable of being claimed elsewhere.

The following expenses may be refunded when they are not fully met by the HSE Employer or by the Department of Social and Family Affairs Treatment Benefit Scheme:

- Doctors’ visits
- Doctors prescriptions
- Certain medical or surgical appliances and the repair and replacement of these ( for example, artificial limbs or hearing aids )
- Certain dental and optical treatment
- Certain qualified nursing at home on the instruction of a doctor
- Certain treatment prescribed by your doctor
- Certain travelling expenses usually limited to the cost of public transport

The expenses must be reasonable and necessary. Medical Care is paid by Cheque. Normally, only one payment is made but if treatment is ongoing, payment may be made in a few instalments. Payment is usually made to the person who claims but may be made to your doctor or the health board if necessary.

**For more detail on these benefits and current rates see Appendix D.**

## Claims to Injuries Board.ie

### Formally known as Personal Injuries Assessment Board (P.I.A.B)

If you receive an injury which is not covered in the Compensation Scheme schedule or which is so severe or complicated that the quantum quoted in the schedule is deemed not to be enough, and you wish to take the legal route you can no longer make a claim directly to the Courts you must first go through the process of applying to Injuries Board.ie and adhere to the following protocol.

- It is advisable to Notify the respondent (A respondent is the term used to describe the person or entity against whom the claim is made) of your intention to make a claim in writing, within 2 months of the injury.
- You must record a claim with Injuries Board.ie within 2 years of the injury but ideally you should contact them at the earliest possible time.

#### How the Injuries Board.ie Works – at a glance.

- Claim is submitted to Injuries Board.ie either online or by post to Injuries Board.ie, P.O Box 8, Clonakilty, Co. Cork.
- Injuries Board.ie send a Formal Notice of the Claim to the Respondent
- Respondent consents to an Injuries Board.ie assessment (if the respondent does not consent Injuries Board.ie will issue an authorisation which allows you to pursue your claim through the Courts system).
- Injuries board.ie arrange an Independent Medical Examination and request details of out of pocket expenses. Without full details of the injuries and out of pocket expenses the assessment will not reflect fully the pain, suffering and expense incurred by the injured party.
- Assessment is made and Claimant and Respondent are notified of assessment i.e. level of compensation being awarded.
- If you accept the Assessment, you must acknowledge this in writing to Injuries Board.ie.
- If the Respondent also accepts the Assessment the Injuries Board will issue an 'Order to Pay'. This has the same status as an award of Court.
- If the Injuries Board do not receive your reply in writing within 28 days, you will be deemed to have rejected the Assessment.
- If either of the parties reject the assessment Injuries Board.ie will issue an Authorisation which allows you pursue your claim through the Court System, if you so wish.

**NOTE** Acceptance of Compensation award under the Compensation Schemes for nurses does not affect your legal rights.

\*You have **6 months** to lodge a legal claim following Injuries Board.ie issuing their “authorisation” or the balance of the remaining time from the 2 year statute bar if greater e.g. if Injuries Board. ie issue an authorisation one year from the date of the injury you have one year to make a claim however the advice is if you intend to go the legal route do it as soon as possible.

We would also strongly advise that if you wish to take the legal route that immediately on receipt of Injuries Board.ie “ authorisation that you contact your solicitor. Many nurses will in any event have used the services of a solicitor to process their case through Injuries Board.ie. While this is not necessary many nurses feel it appropriate to do so.

Injuries Board.ie in their documentation state that, *“you should be aware that if you reject the assessment when made and legal proceedings issue there may be cost implications for you and/or the respondent.”*

**Appendix D sets out in more detail how the Injuries Board.ie works.**

## MISCELLANEOUS RELATED MATTERS

### 1. Application of Article 109 (Injury Grant) to non-assault injury.

Article 109 is also capable of being applied to nurses injured at work but not by assault. The manner of calculation is exactly similar to that for nurses injured by assault as outlined in Appendix A, except that a person's degree of impairment is taken into account in determining the amount of injury allowance payable.

E.g. at Appendix A the injury grant outlined in that instance, amounted to £4,891 and the nurse because they were assaulted benefitted from the full amount. If that nurse was injured by some other workplace accident then the person's "degree of impairment" is taken into account and if degree of impairment is set at say 60% then the injury grant in that instance will be 60% of £4,891 i.e. £2934.60 (Dept of Environment Circular Letter S.7/2001 dated 12th April 2001 deals with the application of Injury Grant in non assault injuries).

This circular "*General Scheme of Injury Grants under article 49 and 109 of the local government (superannuation) (Consolidation) scheme 1998*" defines Degree of Impairment thus:

*"In sanctioning cases under the general scheme to date and in the absence of any access to a Chief Medical Officer, this Department (Dept of Environment) has had regard to a person's degree of disability as assessed by the Department of Social, Community and Family Affairs for the purposes of the payment of disablement benefit. In the context of the devolution of responsibility for injury grants under the general scheme to health boards/hospitals, each health board/hospital should arrange its own independent medical assessment of the person's degree of impairment, i.e. the degree (expressed in percentage terms) to which the person's capacity to contribute to his/her own support is impaired. The assessment of a person's degree of impairment should be made as soon as possible following the injury"*

### 2. Application of Article 109 for life

The PNA wrote to the Dept of Environment requesting clarification of what "life" meant. A reply was received from the Dept of the Environment dated 23/08/02 which stated:

*"Article 109, subject to certain conditions being met, provides for the payment of an injury allowance for life or for a limited period as a local authority may consider reasonable. While the payment of an injury allowance is a matter for each individual local authority, it is the Department's view that where a local authority decide to pay an injury allowance for life, such allowance should be payable for the lifetime of the individual concerned"*

However the HSE EA challenged this interpretation when they ceased payment of an injury grant to a nurse when he reached age 65. This decision was appealed by the nurse (not a member of the PNA) to the Pension's Ombudsman.

In the Pension Ombudsman's determination he stated:

*"The HSE EA has clearly stated that the basis for their policy of stopping the payment of an injury allowance once the recipient reaches 65 years of age is the fact that they do not think it is fair that a staff member on the injury grant should be treated more favourably than a staff member who has retired at age 65 with full service" and "... it is clear that the HSE had the legal authority to cease payment of the complaints injury allowance when he reached 65 years of age as they clearly considered it reasonable to do so at this age .... my final determination is that this complaint should be disallowed"*

He did go on to state in the general text of his determination: *“However, I feel it is important to note that in general the period of time a person receives the allowance for is not recognised for pension purposes. If, for example, a person retired for health reasons and was granted an injury allowance when they had only 10 years service, applying the HSE EA rules would mean that at age 65, that person would revert from being on an allowance of 5/6ths of salary to a pension based on only 10 years of service. In these circumstances I feel that a more reasonable solution might be that the years for which the injury allowance is paid should also count for pension purposes. In this way the application of the HSE EA policy would not have such a catastrophic effect when the recipient reached the age of 65”.*

In this final determination he states:

*“On the basis that in making a determination under Section 139 of the Pensions Act I am not entitled to make a direction which would require an amendment to the rules of a scheme, I am, however, recommending that the HSE should set out clear procedures both for the granting, review and cessation of injury allowances which should be made available in advance to all persons applying for such allowances”*

and

*“I am also recommending that consideration should be given to the amendment of the rules to the Local Government (Superannuation) (Consolidation) Scheme 1998 to provide that the years for which the injury allowance is paid should also count for pension purposes”.*

He concluded by stating that:

*“In my preliminary determination I had recommended that, notwithstanding the general procedures as laid down by the HSE EA for the cessation of injury allowances, each case should be considered on its merits as in certain circumstances there may be reasonable justification for the payment of the allowance beyond the age of 65. I have noted the comments of the HSE EA in relation to this recommendation.*

*Nevertheless in my opinion this recommendation is simply reiterating what is already provided for under the rules of the LGSS which states that an injury grant may be paid “for life or for a limited period as the local authority may consider reasonable”. Under the circumstances it is still my opinion that in certain exceptional circumstances there may be justification for the payment of the allowance beyond the age of 65).*

Unfortunately the HSE EA has used the part of the Pension’s Ombudsman’s determination that disallowed the appeal in this specific case to justify a policy of ceasing all injury grants at age 65. They have completely ignored the Pensions Ombudsman recommendations with regard to amending the rules of the superannuation scheme or that each case should be considered on its merits.

### **Reference of Complaint by PNA on behalf of Pensioner whose grant was discontinued at age 65.**

The PNA referred a complaint to the Pensions Ombudsman in December 2008 when the HSE ceased payment of an Injury Grant to a nurse when she reached 65 years of age. This nurse was assaulted in 2000 and was in receipt of the injury allowance from June '01 to the date of her 65th birthday in 2008.

The background to this case was the issue of an instruction from Mr Brendan Mulligan H.S.E.A to Mr Sean Keane HSE Pensions Standards and Quality Manager on 22nd August 2006 that Injury Grants “should not extend beyond normal retirement age”.



This instruction together with an extract from a final determination by the Pensions Ombudsman in the case referred to above in December '06, was the basis for the decision to discontinue the Grant in respect of our member in 2008.

The Pensions Ombudsman in his determination relating to our member which issued on the 9th March 2010, stated that with regard to this instruction

*"This instruction, as I have already stated, predated my determination in case numbered PO0505039, which was issued in December 2006. It is disingenuous at best, to represent the later determination as being the justification for the earlier circular. In fact the determination in question clearly runs counter to the instruction contained in the Circular" and "There has been no attempt to explain why the circular referred to above appears to ignore completely the crucial phrase from the Article, "shall be payable for life or...."- to do so would appear to be completely irrational, if not actually perverse".*

The Pensions Ombudsman also outlined what he saw as the intention behind payment of the Injury Grant under section 109. In his determination he stated

*"It is clear to me that the intention behind Article 109 was to cater for the possibility that an Injury Grant might have to be payable for life as, for example, in a situation where an employee was injured early in their career, before they had time to earn any reasonable pension entitlement. In those circumstances, the complete discontinuation of an Injury Grant payment would indeed render them penniless, even though their injuries were sustained in the service of the employer and through no fault of their own". He goes on to say that "The payment of an Injury Grant renders subsequent periods of service non-pensionable. To that extent, it is neither fair nor reasonable to discontinue the grant in total upon the attainment of pensionable age by the grantee".*

In his final determination he *"directs that the Injury Grant be continued for her lifetime, to the extent of an amount equal to the additional pension which would have been earned by her had her service from the 22/06/01 until her 65th birthday been reckonable for pension purposes."*

and

*"I find that the issuance of the Circular on 22 August 2006 is of itself an act of gross maladministration and I therefore direct the HSEA to withdraw formally the instruction in relation to the discontinuance of an Injury Grant at age 65; and that it forthwith inform all units which received that circular that it is incorrect; that all cases of injury grants which come up for review on the attainment by the relevant officer of age 65 should be submitted for consideration upon the merits of each case."* and

*I further direct that the HSE and the HSEA shall henceforth desist from issuing any instruction which purports to fetter in advance the exercise of a discretionary power, whether that power is given to a Minister or to an authority under the terms of the Local Government Superannuation Scheme"*

**For more information on the determination see [www.pna.ie](http://www.pna.ie) or contact PNA Head Office**

### 3. Application of Special Scheme for Nurses injured by Assault extended to include Injuries sustained by nurses participating on Control and Restraint courses.

**The Local Government Staff Negotiations Board by letter of 7th December 1995 stated:**

*“The Board has considered the representations made by unions for the inclusion of personnel injured while participating on the control and restraint courses and are agreeable to amend the Scheme for nurses absent from work as a result of a serious physical assault incurred in the course of his/her duty to include the following:”*

*“The management of assaults would form an integral part of any Control and Restraint course and against this background, a nurse injured while in pursuance of a course organised by the health board on Control and Restraint only may benefit from the terms of the above scheme”*

### 4. Social Welfare Benefits

The Social Welfare code does not make any distinction relating to injury at work between injuries sustained by assault or otherwise.

### 5. Non Assault Injuries

Many queries are received regarding application of the special scheme and compensation scheme to nurses injured at work but not by assault.

Unfortunately neither the Revised Scheme for Nurses Injured by Assault or the Compensation Scheme apply to nurses that are injured by non-assault. Claims have been consistently made over the years to have the scheme for nurses injured by assault applied but to no avail. The only recourse that one has for non assault injuries is to make an application to the Injuries Board.ie and if not resolved referral to the Law Courts.

If the case goes to the Law Courts you will more than likely have to be able to establish negligence on the part of the employer. Some significant pointers as to what is required were referred to in a Supreme Court Judgement that overruled a High Court Judgement in favour of a worker who had taken a case against Dunnes Stores.

In this Personal Injury case, the worker claimed that as a result of the appellants breach of duty to him, he incurred a recognised psychiatric illness and not mere hurt, upset and injury to his feelings and in addition physical injury being the exacerbation of his Crohn's disease.

Judge Finnegan in his judgement on the appeal referred to the key tests set out by the UK Court of Appeal in the case of *Hatton v Sutherland* (2002 AER 1).

*“In examining the law, the Court went back to first principles – liability in negligence depends upon three inter-related requirements:*

1. *The existence of a duty to take care.*
2. *A failure to take the care that can be reasonably be expected in the circumstances.*
3. *Damages suffered as a result of that failure.*

*“The test is not concerned with the person of ordinary fortitude. The answer may be found in asking the question whether the employer knew, or ought to have known of a particular vulnerability.*

*“The question for determination then is whether the appellant took reasonable care. What is reasonable depends on:*

- *The foreseeability of harm*
- *The magnitude of the risk of that harm occurring.*
- *The gravity of the harm which may take place*
- *The cost and practicality of prevention*
- *The justifications for running the risk*

**Note:**

Obviously if you wish to take a personal injury case into the Law Courts following an unsuccessful attempt to resolve it through the Injuries Board.ie you will need to be aware of the foregoing and we wish to again advise that if going to Court you should contact a solicitor as soon as possible on receipt of “authorisation” from Injuries Board.ie, but as stated previously many nurses will have already engaged the services of a solicitor to process their case through Injuries Board.ie

## APPENDIX A

### Calculation of Injury Allowance under Special Scheme

(This official calculation was contained at Appendix B of circular letter S.9/97 from Dept of Environment dated 16th July 1997 and is the most up to date example of an official calculation. Calculations today would of course be based on current salaries but the exact same principles apply).

#### Example 1

A Nurse is assaulted and is absent from work –

Pensionable Remuneration	=	<b>£18,000</b>
5/6 of P.R	=	<b>£15,000</b>
Social Welfare Disablement Benefit, £25 p.w.	=	<b>£1,304.50</b>
Injury allowance per annum	=	<b>£13,695.50</b>

#### Example 2

A Nurse is assaulted and has to retire as a result. S/he has 25 years service, inclusive of ill-health added years.

Pensionable Remuneration	=	<b>£18,000</b>
(i) 5/6 of P.R	=	<b>£15,000</b>
(ii) Annual Pension (£18,000 x 25/80)	=	<b>£5,625</b>
(iii) Annualised Lump Sum (£18,000 x 25/60 - £18,000 x 25/80)	=	<b>£1,875</b>
(iv) Social Welfare Disablement Benefit £50 p.w (50 x 52.18)	=	<b>£2,609</b>
Injury Allowance (1 - (ii+iii +iv))	=	<b>£4,891</b>

In this case the nurse is paid a pension of **£5,625** a lump sum of **£16,875** and an injury allowance of £4,891.

**(Editors Note) The Annualised Lump Sum @ (iii) is a notional amount factored into the calculations based on an actuarial value of the Lump Sum having been paid. (The Nurse will in this instance have received a Lump Sum payment of €16,875) It is the difference between the Lump Sum being calculated on the basis of 60th + 80th and amounts to approx one ninth (1/9th of the lump sum. It is an amount factored into the calculations while the injury allowance remains in payment.**

## APPENDIX B

### (Reproduction of Extract From of HSE/HR Circular 29/2008)

#### The ICD-10 Classification of Mental and Behavioural Disorders Diagnostic Criteria for research World Health Organization Geneva

##### **F43.1 Post-traumatic stress disorder**

- A. Exposure to a stressful event or situation (either short or long lasting) of exceptionally threatening or catastrophic nature, which is likely to cause pervasive distress in almost anyone.
- B. Persistent remembering or “reliving” the stressor by intrusive flash backs, vivid memories, recurring dreams, or by experiencing distress when exposed to circumstances resembling or associated with the stressor.
- C. Actual or preferred avoidance of circumstances resembling or associated with the stressor (not present before exposure to the stressor).
- D. Either (1) OR (2):
  - (1) Inability to recall, either partially or completely, some important aspects of the period of exposure to the stressor.
  - (2) Persistent symptoms of increased psychological sensitivity and arousal (not present before exposure to the stressor) shown by any two of the following:
    - A) Difficulty in falling or staying asleep;
    - B) Irritability or outbursts of anger;
    - C) Difficulty in concentrating;
    - D) Hyper-vigilance;
    - E) Exaggerated startle response.
- (3) Criteria B, C and D all occurred within six months of the stressful event, or at the end of a period of stress.

(For some purposes, onset delayed more than six months may be included but this should be clearly specified separately.)

## APPENDIX C

### Social Welfare Benefits/Details and Rates

#### Injury Benefit

Injury Benefit is one of the benefits available under the Occupational Injuries Benefit Scheme. It is a weekly payment made to you if you are unfit to work due to:

- An accident at work
- An accident while travelling (on an unbroken journey) directly to or from work
- An occupational disease

An occupational disease is a disease that you contract in the course of your employment or due to the work you do, for example, from contact with physical or chemical agents. The Department of Social and Family Affairs has a list of Prescribed Occupational Diseases.

To get Injury Benefit you must be unfit to work for more than 3 days as a result of the accident or disease (excluding Sundays or paid holiday leave). However, even if you are out of work for less than three days you are entitled to a declaration that an occupational accident occurred. This safeguards your future rights to benefits under the Occupational Injuries Benefit Scheme as not all work accidents and diseases result immediately in illness or disablement.

#### Rules

##### Social insurance (PRSI) contributions

People covered by PRSI Class A, D, J or M are covered in full for Injury Benefit. This means, almost all employees in Ireland are insured for Injury Benefit.

**You do not have to be insured under Class A, D, J or M for any particular length of time to qualify for Injury Benefit.** You will qualify if you are unfit to work because of an accident at work or an occupational disease. Your illness or incapacity must last for more than 3 days (excluding Sundays or paid holiday leave).

##### Length of time Injury Benefit is paid

Injury Benefit is not paid for the first 3 days of your illness or incapacity. Payment can be made for up to 26 weeks starting from the date of your accident or development of the disease.

If you are still unable to work after 26 weeks, you may be entitled to Illness Benefit, Disability Allowance or Supplementary Welfare Allowance. You may also be entitled to Disablement Benefit if you suffer a loss of physical or mental faculty as a result of the accident or disease. Alternatively, if you do not qualify for Illness Benefit or another social welfare payment and you are getting Disablement Benefit, you may be eligible for Incapacity Supplement.

## Rehabilitative work

You may take part in training or part-time work which is rehabilitative and get Injury Benefit. You **cannot** work for more than 20 hours per week. You must get permission from the Occupational Injuries Benefit Section (see 'Where to apply' below) before you start rehabilitative work or training.

It should be noted that exemptions allowing a person to work are not normally granted within the first 26 weeks of Injury Benefit. However, at the end of your Injury Benefit, if you qualify for either Illness Benefit or Incapacity Supplement with Disablement Benefit, an exemption to work may be granted at that stage.

## Rate of Injury Benefit from January 2010 (Similar to rates for Illness benefit Class A PRSI)

Injury Benefit	Weekly Rate
Personal Rate	€196.00
Increase for a Qualified Adult	€130.10
Increase for a Qualified Child	€29.80 (full-rate) €14.90 (half-rate)

You may get an increase in your payment for an adult dependant and dependent children.

## How to apply

You should apply for Injury Benefit within 21 days of becoming ill, otherwise you may lose benefit.

To apply for Injury Benefit, you should visit a doctor and get a First Social Welfare Medical Certificate. The First Social Welfare Medical Certificate is both an application form and medical certificate for Injury Benefit. Send it to the Injury Benefit Section, Department of Social & Family Affairs.

You should forward an Intermediate Medical certificate each week for as long as you are unfit for work. You can get an Intermediate Medical Certificate from your doctor.

## Disablement Benefit

Disablement Benefit is a benefit under the Occupation Injuries Scheme. It can be paid to you if you suffer a loss of physical or mental faculty because of an accident at work, an accident travelling directly to or from work, or a prescribed disease contracted at work. Payment is made where the level of disablement following the accident or disease is assessed at 1% or more.

Your payment depends on the degree of your disablement, which is medically assessed. For assessments of less than 20%, Disablement Benefit will normally be a lump sum (gratuity). The size of the lump sum will vary depending on the degree of disablement and how long you are expected to be disabled. For assessments of 20% upwards, a pension is payable.

## Rules

You may get Disablement Benefit if you suffer a loss of physical or mental faculty because of:

- An accident at work
- An accident while travelling (on an unbroken journey) directly to or from work
- An occupational disease

## Loss of physical or mental faculty

The extent of Disablement is assessed following an examination by a Medical Assessor who will assess the extent of your loss of faculty as a result of your occupational accident or disease. "Loss of faculty" means your inability to enjoy a normal lifestyle because of the loss or partial loss of your ordinary physical or mental abilities as a result of your occupational injury or disease. In assessing the degree of loss of faculty, account is taken of how your current physical and mental condition compares to your pre-accident state of health and how you compare with a healthy person of the same age and sex.

Examples of assessments are as follows:

<b>Injury</b>	<b>Disablement</b>
Loss of Both hands	100%
Loss of one eye	40%
Loss of a thumb	30%
Loss of 2 fingers of one hand	20%
Loss of index finger	14%

## PRSI Contributions

In order to qualify for Disablement Benefit, you must be in employment that is insurable at PRSI Class A, B, D, J or M.

(Under the Occupational Injuries Scheme, Civil Servants insured at PRSI Class B are not eligible for Disablement Benefit for the first 26 weeks after the date of accident. This is because for this 26 week period, Civil Servants continue to be paid by their parent Department. After this 26 week period, a Civil Servant is paid half their salary and half rate Disablement Benefit).

## Rate of Disablement Benefit from January 2010

<b>Level of Disablement</b>	<b>Maximum Weekly payment from January 2010</b>
Over 90%	€227
-90%	€204.30
-80%	€181.60
-70%	€158.90
-60%	€136.20
-50%	€113.50
-40%	€90.80
-30%	€68.10
-20%	€45.50

## Up to 19% disablement:

A lump sum may be payable up to a maximum of €15,880 (from January 2010).



**NOTE:**

- All work accidents or occupational disease may not result immediately in illness or disablement. If you are not immediately incapacitated but wish to safeguard your future right to Disablement Benefit, you should notify your employer about the accident or disease and apply for a declaration that your accident or disease was an occupational one. This should be done without delay. Declaration forms are available from the Injury Benefit Section of Department of Social and Family Affairs (see 'Where to apply' below).
- If your disablement occurs at a later stage, you should claim within three months of becoming aware.

**Occupational Injuries Benefit Section**

Department of Social & Family Affairs  
Aras Mhic Dhiarmada  
Store Street  
Dublin 1  
IRELAND  
Tel:  
(01) 7043018

**Medical Care Scheme**

An insured person in Ireland who is injured at work, on an unbroken journey to/from work or who contracts a prescribed occupational disease is entitled to benefits under the Occupational Injuries Scheme. One of these benefits is Medical Care. The Medical Care Scheme allows you to get a refund of the cost of medical care and attention that are not paid by the Health Service Executive (HSE) Area or by way of Treatment Benefit from the Department of Social and Family Affairs (DSFA).

**The following expenses may be refunded when they are not fully met by the HSE/Employer or the Department of Social and Family Affairs Treatment Benefit Scheme:**

- Doctors' visits
- Doctors prescriptions
- Certain medical or surgical appliances and the repair and replacement of these (for example, artificial limbs or hearing aids)
- Certain dental and optical treatment
- Certain qualified nursing at home on the instruction of a doctor
- Certain treatment prescribed by your doctor
- Certain travelling expenses usually limited to the cost of public transport

The expenses must be reasonable and necessary. Medical Care is paid by Cheque. Normally, only one payment is made but if treatment is ongoing, payment may be made in a few instalments. Payment is usually made to the person who claims but may be made to your doctor of the health board if necessary.

## Rules

To qualify for a refund of medical costs you must satisfy the following conditions:

- Your injury must have been caused by an accident at work or as a result of your work you must have contracted a prescribed occupational disease and
- You must notify the Department of your intention to claim medical care within 6 weeks of the start of medical treatment. This is normally six weeks from the date of the accident or the development of the disease and you must be in employment insurable at PRSI class A, B, D, J or M.

All work accidents or occupational diseases may not result immediately in illness or disablement. If you are not immediately incapacitated but wish to safeguard your future right to benefit, you should notify your employer about the accident/disease and apply for a declaration that your accident/disease was an occupational one. This should be done without delay.

## How to apply

To apply, fill in a Medical Care form C1. If you don't have a C1 form, you can phone the Injury Benefit Section and ask them to send you a C1. You can also fill in a notice of request for medical care form found at the back of DSFA booklet Medical Care SW34 and return it to the Injury Benefit Section, at the address below. A C1 form will then be sent to you.

Make sure you quote your PPS number (previously known as your RSI number) on any receipts you send in with the medical care claim for C1. For more information or to make an application.

### Department of Social & Family Affairs

Social Welfare Services Office  
Government Buildings  
Ballinalee Road  
Longford  
IRELAND

Tel:  
(043) 3340000  
Locall:  
1890 92 77 70  
Homepage:  
[www.welfare.ie](http://www.welfare.ie)

NOTE: This document does not purport to be a comprehensive guide for benefits available from the Dept of Social & Family affairs as they differ based on PRSI Classification and differ based on personal circumstances. For full details of your entitlement contact your social welfare office or the contacts listed above.

## APPENDIX D

### Injuries Board.ie

Under the Personal Injuries Assessment Board Act 2003, anyone intending to seek compensation for a personal injury (other than a personal injury arising out of medical negligence) must make an application to Injuries Board.ie formally known as the Personal Injuries Assessment Board (PIAB) before you can pursue a claim through the courts. Injuries Board.ie handles personal injury claims relating to motor accident, accidents in the workplace and claims involving public liability. This section informs you of how to apply to Injuries Board.ie if you have sustained a personal injury and wish to seek compensation. The following sections outline the various steps involved and is reproduced from material published by Injuries Board.ie by kind permission.

#### What should I do following an accident?

As soon as possible following an accident you should contact the Respondent (A Respondent is the term we use to describe the person or entity against whom a claim is being made) (for further information please see Respondent Identification Guide and notify them of your intention to make a claim. It is advisable to notify the Respondent, in writing, within two months of the accident. To make a personal injuries claim you then need to submit an application to Injuries Board.ie

#### How do I submit an Application to Injuries Board.ie?

You can submit your Application by any of the following methods:

- Online – or -
- By post to Injuries Board.ie, P.O. Box 8, Clonakilty, Co. Cork

The following documentation is required for you to complete your application to Injuries Board.ie.

- A completed application form (Form A) which can be submitted online or by post.
- A medical assessment for (Form B) completed by your treating doctor. This can be submitted by you online or by post.
- Payment of €50. This can be paid by contacting 1890 829 121 with credit/ laser card detail or online if you are submitting your Application online. Alternatively you can send a cheque or postal order payable to Injuries Board.ie by post to Injuries Board.ie, PO Box 8, Clonakilty, Co. Cork.

While an Application can be completed online this form is also available:

- On their website: Injuries Board.ie
- by phone: LoCall 1890 82+ 121 or
- by writing to: Injuries Board.ie, PO Box 8, Clonakilty, Co. Cork

#### How long do I have to make a Claim?

The normal timeframe within which you must make a claim is limited by law to two years from the date of the accident. There are exceptions to this for persons under 18 years of age and some other categories of cases. You are advised to submit your completed application to Injuries Board.ie as soon as possible and well before the expiry of the two year period.

#### How long does it take to process a claim?

In the majority of cases we will issue an assessment of the claim within 9 months from the date the Respondent (the person or entity against whom a claim is made) agrees to an assessment by the Injuries Board.ie.

### **What happens when Injuries Board.ie receives my completed Application?**

Injuries Board.ie will examine the Application and supporting documentation. Only when all required documentation has been received by Injuries Board.ie can we proceed.

When the Application is complete i.e. application, medical assessment form and €50 fee received, we will acknowledge the date of receipt and confirm your Application number. We will also advise you on the next steps in the process.

### **What happens next?**

Injuries Board.ie will notify the person you hold responsible for your injury (the Respondent) of your intention to make a claim against them. The Respondent will be provided with a copy of your Application Form and also a copy of your Medical Report.

The Respondent has 90 days to confirm whether or not they consent to the assessment of your claim. If we receive consent from the Respondent we will proceed with the assessment of your claim.

The Respondent does not consent to the assessment of your claim we will issue an Authorisation permitting you to pursue your claim through the Court system if you so wish. Once all required documentation has been received by Injuries Board.ie we will proceed with the assessment of your claim. Normally an assessment comprises of General Damages and Special Damages.

### **When Should I attend for an Independent Medical Examination?**

Injuries Board.ie will arrange, where necessary, an Independent Medical Examination shortly after the Respondent has consented to the assessment of your claim.

Generally Injuries Board.ie will inform you or your representative of the appointment with the Independent Doctor within four weeks of the Respondent having consented to the assessment of your claim. The Respondent has 90 days from the date that we issue the Formal Notification to consent to the claim. If you have not received an appointment within four weeks of this date you should contact Injuries Board.ie or your representative for further information.

An independent Medical Examination is arranged to ensure that the Assessment of your claim is based on the most accurate and up to date information available and that this Assessment reflects the true value of you claim. It will ensure that you receive the correct level of compensation. If full up to date information in relation to your injuries is not available together with all of your out of pocket expenses your assessment will not reflect the full value of your claim.

A copy of the Independent Medical Report(s) received by Injuries Board.ie will be issued to you with our Notice of Assessment.

If you have not received details of a medical appointment and think that you should have received an appointment please contact Injuries Board.ie on **1890 829 121 8 8am to 8pm Monday to Saturday** or your representative for further information.

### **What are General Damages?**

General Damages cover compensation for pain and suffering resulting from injuries which you sustained in your accident. The Estimator will provide you with a guide to the Damages you may receive.

### **What are Special Damages?**

Special Damages are any expenses that you have incurred as a result of an accident. Special Damages cover areas such as loss of earnings (see loss of earnings calculator), medical expenses, out of pocket expenses and vehicle damage costs. In serious cases there may also be future loss of earnings, future expenses etc.

### **What is the Book of Quantum?**

The Book of Quantum is a general guide as to the amounts that may be awarded or assessed in respect of specified types of injury. Please see also the Estimator. The law requires Injuries Board.ie and the Courts to have regard to the Book of Quantum.

### **What happens when Injuries Board.ie completed the Assessment?**

We will let you and the Respondent know in writing the amount of the Assessment i.e. the level of compensation being awarded. You have 28 days from the date of receipt of the notice of Assessment to confirm in writing whether you accept or reject the Assessment.

You should be aware that if you reject the Assessment when made and legal proceedings issue there may be cost implications for you and/or the Respondent.

### **What is an Authorisation?**

An Authorisation is a legal document issued to you which entitles you to pursue your actions through the Courts System, if you wish.

### **What happens if I receive an Authorisation?**

An authorisation is a legal document issued to you which entitles you to pursue your action through the Court system, if you so wish. If you intend to pursue your claim further you should do so immediately upon receipt of your Authorisation so that the time for bringing the claim does not expire.

An Authorisation is issued if:

- The respondent has declined to let the claim proceed to assessment from the outset or
- The Assessment has been rejected by either you or the Respondent.

An Authorisation may also be issued in exceptional cases and Injuries Board.ie will advise both the Claimant and the Respondent if the claim falls within this category.

### **How can I contact Injuries Board.ie?**

If you have any questions regarding the Injuries Board.ie process please contact us at:

Injuries Board.ie

P.O. Box 8

Clonakilty

Co. Cork

Tel: **LoCall 1890 829 121 or from Northern Ireland 0870 876 8121** –  
Monday to Saturday (8am-8pm) Email: [enquiries@injuriesboard.ie](mailto:enquiries@injuriesboard.ie)

**At all times it is open to the parties involved to agree settlement of the claim and you should advise Injuries Board.ie if this occurs**

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